

Requests for Mediation
September 2001 - August 2002

DATE REQUEST RECEIVED		DISPUTE ISSUE(S)	FILED BY	OUTCOME
1	September 2001	Evaluation - identification	Parents	Agreement reached
2	January 2002	IEP and student absences	Parent	School declined to participate
3	February 2002	IEP team communication	Parent	Mediation attempted, no agreement
4	March 2002	IEP team communication	School	Parents declined to participate
5	March 2002	Violation of school rules and student conduct	School	Agreement reached
6	May 2002	IEP team communication	School	Parents declined to participate

* mediations held in accordance with due process requests

Requests for Due Process Hearings
September 2001 - August 2002

DATE REQUEST RECEIVED		DISPUTE ISSUE(S)	FILED BY	OUTCOME
1	November 2001	Consent for evaluation	Sp Ed Director	Withdrawn when parent consented
2	February 2002	Consent for evaluation	Sp Ed Director	Withdrawn when parent consented
3	May 2002	Dismissal of special education services	Parent	No dismissal; Unit position upheld

* mediations held in accordance with due process requests

**Requests for Complaint Investigation
September 2001 - August 2002**

	DATE OF COMPLAINT	ISSUE(S)	VIOLATION OF IDEA FOUND?
1	9/25/01	1. FAPE	No
2	10/29/01	1. Procedural Safeguards 2. Evaluation 3. FAPE	1. Yes 2. No 3. No
3	11/13/01	1. FAPE 2. LRE 3. Procedural Safeguards 4. FAPE 5. FAPE	1. Yes 2. No 3. No 4. Yes 5. Yes
4	11/30/01	1. FAPE 2. FAPE 3. FAPE	1. Yes 2. Yes 3. No
5	1/4/02	1. LRE 2. Procedural Safeguards	1. Yes 2. No
6	3/18/02	1. FAPE 2. Evaluation	No investigation, timeframe expired
7	4/15/02	1. FAPE 2. FAPE 3. FAPE	1. No 2. No 3. Yes
8	4/25/02	1. Procedural Safeguards 2. Procedural Safeguards	1. Yes 2. No
9	5/8/02	1. FAPE 2. Procedural Safeguards	1. No 2. Yes
10	5/10/02	1. FAPE	Yes
11	6/28/02	1. Procedural Safeguards 2. Evaluation 3. LRE 4. FAPE	1. No 2. No 3. No 4. No
12	7/09/02	1. FAPE 2. FAPE 3. FAPE	1. Yes 2. No 3. Yes

DATE OF COMPLAINT		ISSUE(S)	VIOLATION OF IDEA FOUND?
13	7/12/02	1. FAPE 2. FAPE	No violation; no investigation
14	7/16/02	1. FAPE	No
15	8/28/02	1. FAPE 2. FAPE	No violation; no investigation

DPI – Special Education Complaint Management Request History

	MEDIATION	COMPLAINTS	DUE PROCESS
SEPTEMBER 2001 – AUGUST 2002	6	15	3
SEPTEMBER 2000 – AUGUST 2001	4	14	5
SEPTEMBER 1999 – AUGUST 2000	5	16	4
SEPTEMBER 1998 – AUGUST 1999	5	4	6

Regional Office for Civil Rights (OCR)

Section 504 Complaints filed from ND

September 2001 – August 2002

K – 12 9

Post Secondary 1

DPI – SPECIAL EDUCATION
COMPLAINT SYNOPSIS
SEPTEMBER 2001 – AUGUST 2002

Note: These summaries are intended to provide information in a greatly reduced format. All complaints are decided on their unique facts. Readers are encouraged to consult the Department or other advisors before applying the conclusions indicated below to another fact situation.

1. Issue (FAPE) & Conclusion

There was no IDEA violation of the school's implementation of the Student's IEP requirements (objectives, adaptations and assistive technology) when Student failed to demonstrate academic success. IDEA does not specify time frames for the provision of special education services; time frames for providing services are to be determined by the IEP team as part of IEP development. Where no time frame is specified, the Department applies the standard of a "reasonable time," to ensure Student's right to receive a free appropriate public education is neither denied nor delayed. The IEP did demonstrate ongoing team attention to effective use of the adaptations - thus the IDEA process for revising the IEP to respond to "what works" for Student has been followed. The decision about appropriate AT devices and services is made in the context of IDEA's requirement to provide an appropriate education, not necessarily the best education.

2. Issues (Procedural Safeguards, Evaluation, FAPE) & Conclusions

The parent written request for evaluation was referred to the BLST; this response was not in compliance with IDEA requirements and a subsequent violation. Though similar in some respects, the BLST and the multidisciplinary evaluation team required by IDEA are distinct entities.

The school removed the Student for a total of 10 days. School officials were within the time frame of permitted removals, thus there is no violation of IDEA as to the out-of-school suspensions as it pertains to the evaluation of student for a disability.

The IEP content shows the IEP team considered Student's lack of academic success and created a plan to address it. The Department concludes there was no denial of credit for a specified class, thus the facts do not establish a basis for finding a violation of IDEA's FAPE requirement.

Corrective action

The Department ordered

- The district and special education unit revise/update policies and procedures regarding BLST and evaluation.

3. Issues (FAPE, LRE, Procedural Safeguards, FAPE, FAPE) & Conclusion

Between IEP annual reviews, the team may amend the IEP by an addendum as long as procedural requirements for IEP development are observed and requirements for IEP content are met; the IEP then consists of the original IEP plus any addenda. However, the current IEP and addenda lack required IEP content thus rendering the school out of compliance with minimum standards. It is not sufficient for the IEP to refer to another document to supply required IEP content. The schedule for review does not comply with the IDEA requirement that the IEP state how the child's parents will be regularly informed; "reviewed on a regular basis," is not sufficiently concrete to be in compliance.

The Department found no violation in the team's placement of Student, as alleged by complainant. The Department reviewed documentation establishing that the school repeatedly tried options to keep Student in the regular education classroom and reasonably concluded that inclusion in regular education was not appropriate.

Suspensions for inappropriate behavior was within the 10 day period during which school administrators have discretion to remove Student without triggering IDEA discipline safeguards, and thus, no violation was cited.

A violation was identified in that Student's behavior intervention plan was not based on analysis of quantified observations, such as tallied and charted behavior observations; that it lacked documentation of training for regular education staff on implementation; and documentation of data collection to determine whether the plan is effective.

Another violation was found regarding ESY; the school's IEP form did not include a cue to remind the team to have the discussion and document the basis for its justification. The school was additionally out of compliance for lack of follow up on the pursuit of summer services to meet the Student's needs.

Corrective actions

The Department ordered

- Training on functional behavior assessment and behavior intervention plans;
- Research current best practices to work more effectively with students with ED;
- Self-monitoring to determine scope of noncompliance;
- Revise IEP form to comply with regulations.

4. Issues (FAPE, FAPE, FAPE) & Conclusions

There was an IDEA violation where goals and objectives in the IEP were not individualized to the Student and were not subject to measurable progress or lack of progress.

The school's progress reports did not meet minimum IDEA standards as the language "significantly deficient" was not clearly identified and did not report meaningful information to the parents telling them the extent to which that progress was sufficient to enable the Student to achieve the goals by the end of the year.

No IDEA violation was present in the issue surrounding parent request for taped classroom notes when Student demonstrated capacity to take written notes and make application of subject matter.

Corrective actions

The Department ordered

- The IEP team reconvene to consider the contents of complaint report, rewrite Student's IEP present levels, goals and objectives, reconsider Student's grade level placement as part of his total educational programming and develop a progress reporting form to be used for Student;
- The school complete an internal file audit regarding compliance with IDEA requirements for evaluations and content of IEP goals and objectives;
- The unit conduct a unit-wide training consisting of an overview of the special education process, including evaluation, IEP development and implementation, and progress reporting, with emphasis on the evaluation process and the components of an integrated written assessment report;
- The unit review unit policies and procedures regarding evaluation, with particular attention to the inclusion of adequate foundational data in the integrated written assessment report and progress report policies and forms.

5. Issues (LRE, Procedural Safeguards) & Conclusions

Pursuant to the parental allegation regarding Student failure in the general education curriculum, the investigation found the school to be in violation. Under IDEA, the IEP team must address lack of progress in the general curriculum by reconvening the IEP team.

The parent alleged to be left out of the decision making process. Federal regulations provide parents the opportunity to participate in the IEP process by mandating prior notice for IEP meetings, the furnishing of procedural safeguards notice, and requiring parental consent for evaluations and services. Documentation of the team meetings reflect that the parent attended and participated, with one IEP meeting following the parent's proposed agenda. The parent's restricted consent to evaluation was similarly honored by the school. IDEA's requirements for parent participation were thus satisfied.

Corrective action

The Department ordered

- The school initiate an internal review of files demonstrating compliance with IDEA requirements for content of IEP present levels, goals, and short term

objectives; progress reports; LRE justification; ESY justification. If the Department is satisfied that the noncompliance found in this complaint investigation is an isolated incident, corrective action will consist of training for those staff members whose documentation is out of compliance.

6. Issues (FAPE, Evaluation) & Conclusion

Complaint incident had exceeded the one-year time limit, no investigation.

7. Issues (FAPE, FAPE, FAPE) & Conclusions

The parents attribute Student's lack of academic success to the school's failure to implement IEP. IDEA does not guarantee academic success, but assures each student receiving special education a process by which unique strengths and needs will be identified; an IEP developed to address those needs and strengths; and progress measured and reported. The school followed the required process. In this case, the parents' expectations of the school's role in Student's academic success exceed what the law requires.

The parents also urged the applicability of portions of IDEA regulations addressing tuition reimbursement for parents who unilaterally enroll their child in a private school after the public school denies the child a free appropriate public education (FAPE). There is no failure to provide FAPE based on failure to implement the IEP and inform teachers of IEP content.

Because therapy is a related service, the school is responsible for the cost of the service. However, it was determined the school was not responsible for therapy sessions prior to the date the IEP calls for the related service, nor for sessions after the parents withdrew Student from the public school. Once the parents withdrew Student from the public school, he was no longer entitled to the same special education and related services and procedural remedies he received in the public schools.

Corrective actions

The Department ordered

- The school to reimburse the parents for out-of-pocket expenses associated with counseling services;
- The school to reimburse the parents' private insurance company.

8. Issues (Procedural Safeguards, Procedural Safeguards)& Conclusions

The investigation revealed the school refused to allow parental access to educational records. As the records in question were directly related to Student; and maintained by an educational agency or institution or by a party acting for the agency or institution, the school was obligated to provide a parent access to all records, including those it did not originate, but that it maintains.

However, the school did not fail to respond to reasonable requests for explanation and interpretation of educational records. It made a good faith effort to comply with parental requests to meet with staff.

Corrective action

The Department ordered

- The school to provide parent an opportunity to inspect and review the evaluation report originated by another related agency and maintained by the school.

9. Issues (FAPE, Procedural Safeguards) & Conclusions

This complaint involved a residential facility and accusations involving multiple students; it was determined that only one of four students involved IDEA violations. The school considered and implemented strategies to address Student's behaviors that interfere with learning, as IDEA requires. However, one feature of Student's IEP/behavior plan, the "at home time out," contravenes IDEA. The "at home time out" presented in this case is an out of school suspension in all but name; it is a complete removal from the school setting. No special education services are provided. The fact that the "at home time out" was developed through the IEP process does not change its essential character as an out of school suspension. Time out at home is inconsistent with Student's LRE justification, which does not in any of its incarnations call for a homebound environment. IDEA does not require schools to compromise the safety of students and staff. IDEA permits school authorities to remove a student with a disability for not more than 10 days at a single time. IDEA further permits school authorities to remove a student with a disability without a specific limit on total days of removal during a school year as long as the removal does not constitute a "change of placement." However, school authorities must "count" days of removal pursuant to "at home time out" as out of school suspension for purposes of IDEA procedural protections for students with disabilities.

The school did conduct a manifestation determination review and records indicate Student had been removed in what was out of school suspension by name or in effect for 10 cumulative school days; thereafter, it was the school's duty to consider whether additional removals constituted a change of placement. At the time of the manifestation determination, Student had been removed for 17 days and thus the manifestation determination review was not timely.

In the remaining three incidents, there is extensive documentation that the IEP team considered positive behavioral interventions and strategies. The IEP discusses behaviors in virtually all sections. The IEP team considered Student's progress toward a behavior objective at its IEP reviews and modified the IEP to reflect Student's mastery of the objective. This is the process IDEA envisions.

Corrective actions

The Department ordered

- The Student's IEP team address a behavior plan without "at home time out.";
- The school provide training for administration and special education staff on IDEA requirements for disciplinary removal, including manifestation determination, and for the provision of services during periods of removal;
- The school district to include within the self-assessment process a study of its policies and practices regarding student behavior, with particular emphasis on the school district's use of positive behavior intervention strategies, current research-based practices regarding student behavior, pro-active as well as reactive behavior intervention strategies, disciplinary removals including documentation of disciplinary removals, and provision of services during periods of removal.

10. Issue (FAPE)& Conclusions

The investigation found failure to provide classroom accommodations and modifications by a general education teacher, a violation of Student's right to FAPE. IDEA 97 was revised to emphasize that the child's IEP must be accessible to each of the child's teachers for implementation of agreed upon responsibilities, accommodations and modifications.

Corrective action

The Department ordered

- The school to develop a professional development plan for the general education teacher with appropriate follow up and training as deemed necessary.

11. Issues (Procedural, Evaluation, LRE, FAPE)& Conclusions

The complainants allege the school failed to evaluate Student after a non-educational legal incident and personal injury attempt. IDEA requires evaluation for the purpose of determining eligibility for special education and related services. The impact of disability on educational performance is key to IDEA applicability. While it may be desirable to evaluate a child for other purposes, IDEA does not require evaluation for non-educational purposes. There is no violation of IDEA where IDEA imposes no duty on the school to act.

Regarding the claim of violation of LRE; Student not being present in the LRE as described by the IEP was a result of parental action, not school action. The parents have no basis for a claim that school action or inaction violated LRE requirements. The Department determined the school met its duty to identify Student as a student with a disability. The school had no duty to identify and evaluate Student for emotional disturbance. The school thus provided special education services at public expense, meeting IDEA requirements, and in conformity with an IEP meeting.

Because the Department finds the school provided a free appropriate public education, the issue of reimbursement does not have to be decided. Psychological services, counseling, and transportation may be related services and thus the financial responsibility of the school under certain circumstances. Those circumstances are not

present in this case. The IEP team is the entity that determines whether a student with a disability needs a particular service.

12. Issues (FAPE, FAPE, FAPE) & Conclusions

Whether a district is responsible to provide therapy as a related service turns on whether the therapy is required in order to derive educational benefit and whether the IEP already addresses the same needs and allows Student to receive meaningful benefit; in other words, an IEP team cannot make a unilateral decision not to provide the service based primarily on their belief that therapy is medical in nature. Thus, a violation of IDEA was identified.

While the determination for ESY must be made in a timely manner so that FAPE is provided, the regulations do not specify a minimum timeline, in terms of how many days in advance of the end of the school year that team determinations must be finalized. The parent was fully informed of the ESY determination and in a timely manner.

The team failed to collect the data needed for planning and decision making in the IEP process. The school denied FAPE in failing to properly evaluate for a suspected disability.

Corrective Actions

The Department ordered

- The school to reimburse the parent for therapy provided during the summer and for related transportation;
- The IEP team to reconvene to address Student's need for services, educational need for therapy and special education instruction;
- The school to complete the recommended audiological testing at the earliest possible opportunity and reconvene the IEP team to determine Student's educational need for audiological services.

13. Issues (FAPE, FAPE) & Conclusion

The allegations made by complainant were not violations of IDEA and no investigation was initiated.

14. Issue (FAPE) & Conclusions

The investigation found that the school did follow Student's behavior intervention plan when school personnel called the police. Student's removal was instituted and conducted by an agency other than the school. In addition, the school did conduct an appropriate functional behavior assessment for Student in compliance with Departmental guidance. The documentation available for this investigation shows the school did convene the IEP team and that the IEP team did address Student's needs for a behavior intervention plan. The requirements of IDEA are thus satisfied.

Student was removed from his school setting by law enforcement authorities due to his criminal actions, not by order of school personnel. The school developed an individualized behavior intervention plan and considered the input of Student's medical care providers. The school convened the IEP team and discussed behavior intervention strategies after Student was discharged from the hospital.

The procedural requirements regarding interim alternative educational settings do not apply in this case. There is no event triggering the application of IDEA as Student was not removed by order of school personnel. Student's IEP did not call for services during the time he was in a residential setting because school was dismissed for the summer. Thus there would have been no justification for the school to send special education and disciplinary records to authorities in order to serve Student. The one-day of services Student did not have is not sufficient to establish a case of noncompliance.

15. Issues (FAPE, FAPE)& Conclusion

The allegations made by complainant were not violations of IDEA and no investigation was initiated.

DPI – SPECIAL EDUCATION **DUE PROCESS SYNOPSIS** **SEPTEMBER 2001 – AUGUST 2002**

Issues presented:

1. What is the appropriate educational placement for Student?
2. Is Student getting FAPE?
3. What is the proper disability category for Student?
4. Does Student continue to need special education services?

Student was identified at the end of 6th grade as eligible for special education and related services in the primary category speech/language and secondary category specific learning disability in the area of written language. Student displayed behavior problems as well as academic difficulties in seventh grade. Student started the school year with less structure and indirect special education services and during the school year moved to more structure. The IEP team requested and the parents agreed to have Student evaluated for his emotional difficulties. Portions of the evaluation were completed but the evaluation as a whole was not completed. At the end of seventh grade, Student was failing. The parents and the school agreed that instead of repeating seventh grade, he would be placed in a separate school setting with the option of returning to the general education setting if behavior improved.

During his eighth grade year, Student generally moved from more structure to less structure in his learning environment. Student had fewer office referrals for discipline than in seventh grade but behavior incidents that did occur included a threat

to kill non specified people and a teacher as well as vandalism. In the separate school setting he made inappropriate comments about teachers, refused to work, and sometimes did not follow rules. In the general education setting he would talk back to teachers, argue with teachers, call other students names, not follow rules, and generally be disruptive.

In seventh and eighth grades, once Student was receiving special education services, his behavior and academics improved, especially when he was in a more structured situation such as one-on-one services. Student's behavior problems arise partially from frustrations with learning, i.e. from his disabilities, and partially from his antagonism toward being categorized as a special education student and receiving special education services. In eighth grade, Student mostly refused to access any of the adaptations of educational services provided to him.

In April of eighth grade, the parents requested that Student exit special education services, believing the provision of special education services was the cause, or at least part of the cause, of Student's educational and behavioral problems. The IEP team, meeting in the parents' voluntary absence, rejected a dismissal from special education and recommended services continue according to the existing IEP and also recommended a clinical evaluation. The school notified the parents of the decision, and the parents filed due process.

The IEP team met between 18 and 20 times during Student's seventh and eighth grade years. Until their April request to exit services, the parents had agreed with Student's IEP's, however reluctantly.

Held: Student is receiving FAPE. His current IEP is appropriate. Student has been appropriately identified but is in need of further evaluation and testing, including a clinical evaluation, to be completed before any changes are made to his IEP.

Ordered: That Student not exit from special education services; that he be provided special education services according to his existing IEP; that Student undergo further evaluation and testing at school expense.

What we've learned....

- The school has a duty to reconvene the IEP team to address lack of progress towards IEP goals and objectives and lack of progress in the general curriculum. Keep an eye on progress in the general curriculum – if it isn't happening, the school must reconvene the team. The Department's periodic progress reporting form includes reminder language at the bottom of the form to serve as a cue to parents and school personnel of this duty.
- The IDEA process works best where general educators' capabilities and knowledge of the IEP process are enhanced. The Department has had several complaints alleging the IEP was not implemented by general educators. These complaints are time consuming for all concerned whether or not the complaint is substantiated.
- Communication among IEP team members is key. Schools that have documentation of parent and other contacts, such as letters and contact logs, are well positioned to show their good faith effort to provide FAPE as well as to show compliance with procedural requirements. Document, document, document. An ounce of prevention is worth a pound of cure!
- Discipline continues to be a challenging area. IDEA speaks in terms of "removals" which are absences from the setting called for in the IEP. The fact of removal is not altered by calling it something else. The team should ask, is removal as an aspect of a behavior intervention plan consistent with the rest of the IEP?
- Parents often express their perception of negative attitudes by school personnel. These perceptions may or may not be accurate from the school's point of view. Accurate or not, the school can take steps to avoid the appearance of negative attitudes. Effective communication with parents goes beyond telling them things and keeping them informed; it is also how they perceive what they're being told – an easy remedy is to ask parents to reflect what they've heard in any meeting to clarify that everyone's understanding is similar.